

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

3:12cv-_____

**GASTON COUNTY, NORTH CAROLINA,
a municipal corporation**

Plaintiff,

vs.

**FREEPLAY MUSIC, L.L.C.,
SHIELS PRODUCTION, INC.,
CHARLES ZAYAK, D/B/A AUDIO YODA**

Defendants.

**COMPLAINT
FOR DECLARATORY JUDGMENT
COPYRIGHT INFRINGEMENT**

Plaintiff, Gaston County has been accused of copyright infringement by defendant Freeplay Music, L.L.C. ("Freeplay"). Gaston County seeks a declaratory judgment that it has not infringed any copyrights owned by defendant Freeplay, and alleges, as follows:

The Parties

1. Gaston County, North Carolina ("Gaston County") is a body politic and corporate existing under N.C.G.S. § 153A-11 that is capable of bringing suit, with its principal offices in Gaston County, North Carolina.

2. Freeplay Music, L.L.C., is a company organized in the State of Delaware, with a principal place of business at 1650 Broadway, Suite 1108, New York, New York 10019.
3. Shiels Production, Inc. ("Shiels"), is a North Carolina corporation having a principal place of business in North Carolina.
4. Charles Zayak, d/b/a Audio Yoda, ("Zayak") is a citizen and resident of North Carolina.
5. There is no direct claim herein against Shiels or Zayak, who are nominal defendants for the purposes of this DECS action.

Jurisdiction and Venue

6. As an action arising under the Copyright Act, 17 U.S.C. § 101 et seq., this Court has exclusive jurisdiction over this action under 28 U.S.C. § 1338. The Court further has jurisdiction over the subject matter as an action arising under the Declaratory Judgment Act, 28 U.S.C. § 2201.
7. Defendant Freeplay is a corporation holding itself out as the owner of copyrights to downloadable music from one or more websites accessible and available across the nation, including in North Carolina. The music has been available for downloading, some access to music purportedly is or has been available without charge, while other downloading of music carries a charge.
8. Defendant Freeplay has sent targeted correspondence to Gaston County by way of email on August 8, 2012 to the clerk of the Gaston County Board of Commissioners,

in Gaston County, North Carolina, alleging that Gaston County infringed Freeplay's copyrights and demanding monetary payment.

9. Defendant Freeplay has substantial, continuous and systematic contacts with this district through the operation of its websites, intended to be accessed from within this district and directed toward consumers residing within this district. Defendant Freeplay is therefore subject to personal jurisdiction in the Western District of North Carolina.

The Present Dispute

10. Certain music was played on video, which was accessible through a Gaston County non-profit informational website maintained in Gaston County, North Carolina.

11. Defendant Freeplay has sent an email to the Clerk to the Board of County Commissioners of Gaston County, wherein Defendant Freeplay claims to own copyrights to "copyrighted music ... being used without our permission in your organization's web content", and demanding immediate payment of an arbitrary sum of money via check or Paypal account.

12. Defendants Shiels and Zayak were involved in the production of the videos at issue.

13. Defendant Freeplay expressly accused Gaston County of infringing the Copyright Act. Gaston County denies that its activities constituted copyright infringement.

14. The accusations by Freeplay create an actual controversy concerning whether Gaston County's operation of a website constitutes infringement under the Copyright Act.

15. Gaston County did not take or download any music from Defendant Freeplay's website.

16. Gaston County did not produce any video containing music allegedly copyrighted by Defendant Freeplay.

17. Gaston County's use of any videos containing allegedly copyrighted music was not for commercial use or for profit.

18. Gaston County is unaware of any copyright infringement.

19. Because Gaston County has not infringed any copyrights owned by defendant Freeplay, then Gaston County is entitled to a declaratory judgment of its noninfringement of any copyrights that may be owned by defendant Freeplay.

Request For Relief

WHEREFORE, Gaston County, North Carolina seeks judgment as follows:

1. That Gaston County has not infringed any copyrights owned by defendant Freeplay Music, L.L.C.;

2. That Gaston County be awarded its attorneys' fees as provided by the Copyright Act or any other applicable authority;

3. That Gaston County be awarded its costs in this action; and
4. That the Court award such other and further relief as it may deem just and proper.

This the 31st day of August, 2012.

s/ Martha Raymond Thompson
NC State Bar # 16020
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